

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

WILLIAM J. MABIE,)	
)	
Movant,)	
)	
v.)	No. 4:11CV01431 ERW
)	
UNITED STATES OF AMERICA,)	
)	
Respondent.)	

MEMORANDUM AND ORDER

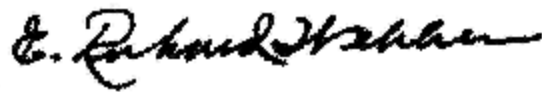
 This matter is before me on movant’s motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Movant seeks relief from the judgment in United States v. Mabie, 4:09CR351 ERW (E.D. Mo.). However, movant filed a direct appeal from the judgment, and movant’s direct appeal is still pending. See United States v. Mabie, No. 10-3526 (8th Cir.). Because the direct appeal is pending, movant’s § 2255 motion has been prematurely filed. See Masters v. Eide, 353 F.2d 517, 518 (8th Cir.1965) (per curiam) (“[o]rdinarily resort cannot be had to 28 U.S.C.A. § 2255 or habeas corpus while an appeal from conviction is pending.”). And I find no extraordinary circumstances that would allow movant to file his motion at this time. As a result, I will dismiss this action without prejudice to refile after the criminal judgment becomes final.

Accordingly,

IT IS HEREBY ORDERED that movant's motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255 is **DISMISSED** without prejudice.

An Order of Dismissal will accompany this Order.

So Ordered this 15th day of September, 2011.

A handwritten signature in black ink, appearing to read "E. Richard Webber", written in a cursive style.

E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE